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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE MONTOYA LOPEZ
(A No. [redacted]),

Petitioner,

v.

TODD BLANCHE, *in his official capacity as Acting* Attorney General of the United States;

MARKWAYNE MULLIN, *in his official capacity* as Secretary of Homeland Security

DAVID J. VENTURELLA, *in his official capacity* as Senior Official Performing the Duties of Director, Immigration and Customs Enforcement

SERGIO ALBARRAN, *in his official capacity* as Field Office Director of the ICE San Francisco Field Office, Enforcement And Removal Operations, U.S. Immigration and Customs Enforcement; and

Case No. 1:26-at-2857

PETITION FOR WRIT OF HABEAS CORPUS

WARDEN, in their official capacity,
Golden State Annex
611 Frontage Road
McFarland, California 93250

Respondents.

INTRODUCTION

1. Petitioner, Jose Montoya Lopez, a Honduran citizen, petitions this Court for a Writ of Habeas Corpus, *see* 28 U.S.C. § 2241, to challenge his custodial detention by the United States Department of Homeland Security, through its component arm, U.S. Immigration and Customs Enforcement ("ICE").

2. Petitioner challenges the Respondents' mistaken assertion that he is subject to their mandatory detention under 8 U.S.C. § 1252(b)(2)(A). That assertion stems from the Respondents' July 2025 reinterpretation of the Immigration and Nationality Act's ("INA") detention provisions, including § 1225(b)(2)(A). *See Hasan v. Crawford*, 800 F. Supp. 3d 641, 657 (E.D. Va. 2025) ("Mandatory detention of all persons illegally in the United States only became official DHS policy when Acting Director of ICE Todd M. Lyons issued an internal memorandum explaining that the agency 'revisited its legal position' on the applicability of §§ 1225(b) and 1226(a).") (quoting *Martinez v. Hyde*, 792 F. Supp. 3d 211, 217-218 (D. Mass. 2025)). Two months later, the Board of Immigration Appeals endorsed this reinterpretation of the detention provisions in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

3. There is a significant and growing body of case law from the federal district courts within this circuit holding that Respondents' reinterpretation of 8 U.S.C. § 1225(b)(2)(A) is contrary to law. *See, e.g., Gomez v. Wofford*, No. 1:26-cv-05299 (VC), 2026 U.S. Dist.

LEXIS 158116, at *2 (E.D. Cal. Jul. 16, 2026) (Respondents' "argument has been widely rejected across this circuit, with Courts finding that § 1225(b)(2) does not apply to noncitizens arrested by immigration authorities in the interior of the United States.); *Devinder Singh v. Acting Field Off. Dir. Of the San Francisco Field Off.*, No. 1:26-cv-03976-NW, 2026 U.S. Dist. LEXIS 157101, at *4-5 (E.D. Cal. Jul. 15, 2026) ("An initial decision to pursue petitioner's detention under § 1226(a) precludes the government from later switching tracks to subject him to mandatory detention under § 1225(b)(2).") This is another such case.

4. Petitioner's continued detention by Respondents without any mechanism to challenge his confinement violates the Due Process Clause of the Fifth Amendment to the United States Constitution and the Immigration and Nationality Act, (8 U.S.C. § 1101 et seq.).

JURISDICTION AND VENUE

5. Petitioner is detained in the Golden State Annex located at 611 Frontage Road McFarland, California, 93250, which is within the jurisdiction of the United States District Court for the Eastern District of California.

6. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 ("habeas corpus"), 28 U.S.C. § 1651 ("All Writs Act"), 28 U.S.C. § 1331 ("federal question"), the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*, and U.S. CONST. amend. V (the "Due Process Clause").

7. This Court may grant relief under 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

8. This Court has jurisdiction to adjudicate habeas corpus claims brought by foreign nationals who challenge the legality of their detention by U.S. immigration officials. *See Reno v. Flores*, 507 U.S. 292, 307 (1993). ("It is well established that the Fifth Amendment

entitles aliens to due process of law in deportation proceedings"). Title 8 U.S.C. § 1252(g) does not operate as a jurisdictional bar because that statute does not apply to actions taken to detain foreign nationals. *See Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) ("Section 1252(g) 'applies only to three discrete actions,' i.e. commencement of removal proceedings, adjudication of removal cases, and execution of removal orders"). Additionally, 8 U.S.C. § 1252(b)(9), does not preclude jurisdiction because that statute applies to review of removal orders and not to detention decisions made prior to the issuance of a removal order. *See Demore v. Kim*, 538 U.S. 510, 517 (2003) ("'where Congress intends to preclude judicial review of constitutional claims its intent to do so must be clear'") (quoting *Webster v. Doe*, 486 U.S. 592, 603 (1988)).

EXHAUSTION

9. Title "28 U.S.C. § 2241 does not specifically require petitioners to exhaust direct appeals before filing petitions for habeas corpus." *Laing v. Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004).

10. However, "[a]s a prudential matter, courts require that habeas petitioners exhaust all available judicial and administrative remedies before seeking relief under § 2241." *Ward v. Chavez*, 678 F.3d 1042, 1045 (9th Cir. 2012).

11. "'[A] court may waive the prudential exhaustion requirement if 'administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void.'" *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Laing*, 370 F.3d at 1000).

12. Here, there is no expectation that the Petitioner will be afforded a custody determination or bond hearing by the immigration judge because the immigration judge is obligated to

apply *Matter of Yajure Hurtado*, 29 I. N. Dec. 216, 220, 225 (BIA 2025). *See, e.g, Balelais v. Andrews*, No. 1:26-cv-03888 (EJD), 2026 U.S. Dist. LEXIS 130720, at *6 (E.D. Cal. Jun. 11, 2026).

REQUIREMENTS OF 28 U.S.C. § 2243

13. The Court must grant the petition for writ of habeas corpus or issue an order to show cause to the Respondents forthwith, unless Petitioner is not entitled to relief. *See* 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within three *days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

PARTIES

14. Petitioner is a Honduran citizen and is now detained by Respondents in the Golden State Annex located at 611 Frontage Road McFarland, California 93250. He is in custody and under the direct control of Respondents and their agents.

15. Respondent Warden, Golden State Annex, is sued in their official capacity as having immediate physical custody of Petitioner and the authority to release him.

16. Respondent Sergio Albarran is sued in his official capacity as the San Francisco Field Office Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement.

17. Respondent David J. Venturella is sued in his official capacity as Senior Official Performing the Duties of Director of U.S. Immigration and Customs Enforcement and supervises and oversees Respondent Albarran.

18. Respondent Markwayne Mullin is sued in his official capacity as the Secretary of Homeland Security. In this capacity, Respondent Mullin is responsible for the implementation and enforcement of the Immigration and Nationality Act ("INA"), and oversees ICE, the

component agency directly responsible for Petitioner's detention. *See* 8 U.S.C. § 1103(a). Respondent Mullin is a legal custodian of Petitioner.

19. Respondent Todd Blanche is sued in his official capacity as the Acting Attorney General of the United States. The Attorney General oversees the Executive Office for Immigration Review and, within the Executive Branch, is the arbiter of all questions of law pertaining to the Immigration and Nationality Act. *See* 8 U.S.C. § 1103(a)(1), 1103(g).

STATEMENT OF FACTS

20. Petitioner entered the United States in or about 2000 without being admitted or paroled.

21. Immigration officers did not apprehend petitioner upon his entry.

22. Petitioner has resided continuously in the United States since his 2000 entry.

23. Petitioner is the father of two children who are United States citizens.

24. On or about April 25, 2026, immigration officials arrested Petitioner while he was driving with his eleven-year-old United States citizen daughter to a dental appointment in Maryland.

25. That same day, immigration officials served Petitioner with a Notice to Appear ("NTA") in immigration court to defend against the charge under 8 U.S.C. § 1182(a)(6)(A)(i), that he is a foreign national present in the United States without admission or parole. *See* Exhibit A (Notice to Appear dated April 25, 2026).

26. After serving Petitioner with the NTA, immigration officials released Petitioner from detention on condition that he wear an ankle monitor.

27. On or about June 23, 2026, an Immigration Judge sitting in Hyattsville, Maryland terminated Petitioner's removal proceedings based on the Department of Homeland Security's failure to prosecute. *See* Exhibit B (Immigration Court Case Information).

28. Two days later, on June 25, 2026, immigration officials instructed Petitioner to report for what was represented as a routine appointment to address issues with his ankle monitor. Upon his arrival, immigration officials detained Petitioner and served him with a second NTA charging him once again under 8 U.S.C. § 1182(a)(6)(A)(i). *See* Exhibit C (Notice to Appear dated June 25, 2026).

29. Petitioner has been in immigration custody since June 25, 2026.

CLAIMS FOR RELIEF

COUNT ONE

Violation of the Immigration and Nationality Act, 8 U.S.C. §§ 1225(b) and 1226(a)

30. Petitioner incorporates and realleges all paragraphs as if fully set forth here.

31. Respondents' theory that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b) rests on their mistaken reinterpretation of the INA's detention provisions at 8 U.S.C. §§ 1225(b)(2)(A) and 1226(a).

32. Several reasons demonstrate the incorrectness of the Respondents' position that they are lawfully detaining him under 8 U.S.C. § 1225(b)(2).

33. Most obviously, Respondents released Petitioner from detention on April 25, 2026.

34. Standing alone, the Respondents' release of Petitioner less than two months ago defeats any post-hoc claim that Petitioner's detention is (or was) mandatory. *See, e.g., Hasan v. Crawford*, 800 F. Supp. 3d 641, 654 (E.D. Va. 2025) (Respondents' treatment of Petitioner "unequivocally demonstrates that he is detained pursuant to § 1226(a)").

35. The Respondents' theory that they are lawfully detaining Petitioner under authority set forth in 8 U.S.C. § 1252(b)(2) also conflicts with the Supreme Court's opinion in *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

36. In *Jennings*, the Supreme Court instructed that 8 U.S.C. § 1225(b) "applies primarily to aliens seeking entry into the United States ('applicants for admission' in the language of the statute)." *Id.* at 297. Section 1226, on the other hand, applies to aliens already present in the United States." *Id.* at 303. "Section 1226(a) creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings." *Id.* "Section 1226(a) also permits the Attorney General to release those aliens on bond . . ." *Id.*

37. Petitioner has resided continuously in the United States for more than 25 years. Plainly, he is "already present in the United States." *Jennings*, 583 U.S. at 303. Under these circumstances, *Jennings* instructs that he is entitled to a bond hearing under 8 U.S.C. § 1226(a).

38. The Respondents' reinterpretation of the law governing detention of foreign nationals without administratively final removal orders is also contrary to common rules of statutory interpretation. It is settled that a "statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . ." *Hibbs v. Winn*, 542 U.S. 88, 101 (2004) (internal quotations omitted).

39. The Respondents' "theory of § 1225(b) — that the provision applies to all persons who have not been admitted into the United States — would render multiple provisions of § 1226 superfluous." *Quispe-Ardiles v. Noem*, No. 1:25-cv-MSN-WEF, 2025 U.S. Dist. LEXIS 194069, at *16 (E.D. Va. Sept. 30, 2025). For example, "[i]f every 'applicant for admission'—which is defined, as relevant here, as an 'alien present in the United States who has not been admitted,' *see* 8 U.S.C. § 1226(a)(1)—is already subject to mandatory detention under section 1225(b)(2)(A), as the government contends, there would have been no need for the new section 1226(c)(1)(E), which mandates detention for every

noncitizen who is 'present in the United States without being admitted or paroled" and who has been "charged with, arrested for, or admits to' committing certain crimes." *Sanchez v. Wofford*, No. 1:25-cv-01187-SKO, 2025 U.S. Dist. LEXIS 218266, at *16 (E.D. Cal. Nov. 5, 2025) (quoting 8 U.S.C. § 1226(c)(1)(E)). "The passage of the Laken Riley Act provision shows that Congress understood that not all noncitizens present in the United States who entered without lawful admission were subject to mandatory detention under section 1225(b)(2)(A), and Congress wanted to ensure that those who had certain criminal histories would be detained." *Id.*

40. The Respondents' reinterpretation of the detention provisions "would [also] upend decades of practice. "Indeed, mandatory detention for all applicants has only been the official policy of the Department of Homeland Security ("DHS") . . . since July 8, 2025, when Acting Director of U.S. Immigration and Customs Enforcement, Todd M. Lyons, issued an internal memorandum explaining that the agency had revisited its legal position" *Martinez v. Hyde*, 792 F. Supp. 3d 211, 217-218 (D. Mass. 2025) (internal quotation omitted).

41. Here, the Respondents' decision to detain Petitioner involved "revisit[ing] a position they had held since 1997. *See Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1261-1262 (E.D. Wa. 2025) (discussing legislative history of 8 U.S.C. §§ 1225 and 1226 and immigration officials' interpretation of those provisions up until July 2025). The Respondents' nearly three-decade interpretation of the INA's detention provisions should inform the Court as to the correctness of that interpretation. *See id.* (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024)).

42. The novelty of the Respondents' new theory of immigration detention is underscored by the conflicting pronouncements of it by the Respondents themselves. In an August 4,

2025, order, the Attorney General determined that foreign nationals arrested in the interior of the United States (other than at a port of entry) are entitled to bond hearings and are detained under 8 U.S.C. § 1226. She did this by designating as precedent "in all proceedings involving the same or similar issues" the Board's decision in *Matter of Akhmedov*, 29 I. & N. Dec. 166 n.1 (BIA 2025).

43. In *Akhmedov*, the Board considered the Department of Homeland Security's appeal of an Immigration Judge's grant of bond to a foreign national arrested in the interior of the United States. *See* 29 I. & N. Dec. at 166, 168. The Board's decision - as adopted by the Attorney General – could hardly be clearer: "The respondent's custody determination is governed by the provisions of section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a) (2018)." *Id.* at 166.

44. Just like the foreign national in *Matter of Akhmedov*, Petitioner was arrested by immigration officers in the interior of the United States. Just like the foreign national in *Matter of Akhmedov*, Petitioner is, at a minimum, entitled to a bond hearing.

45. "The Board shall be governed by the provisions and limitations prescribed by applicable law, regulations, and procedures, and by decisions of the Attorney General (through review of a decision of the Board, by written order, or by determination and ruling pursuant to section 103 of the Act)." 8 C.F.R. § 1003.1(d)(1)(i).

46. By statute, the Attorney General's determinations and rulings on all questions of law pertaining to the Immigration and Nationality Act bind the Executive Branch. *See* 8 U.S.C. § 1103(a)(1). *Akmedov*, and not *Yajure Hurtado*, governs here.

47. For all these reasons, the Respondents' assertion that they are detaining Petitioner under authority set forth in in 8 U.S.C. § 1225(b) is incorrect. The Court should therefore grant Petitioner's Petition for Writ of Habeas Corpus.

COUNT TWO

Violation of Fifth Amendment Right to Due Process

48. Petitioner incorporates and realleges paragraphs 1-29 as if fully set forth herein.

49. It is settled that the Fifth Amendment's Due Process Clause applies to all "persons" within the United States. *See Matthews v. Diaz*, 426 U.S. 67, 77 (1976). The term "persons" includes foreign nationals such as Petitioner. *See id.*; *see also Reno v. Flores*, 507 U.S. 292, 306 (1993) (citing *The Japanese Immigrant Case*, 189 U.S. 86, (1903)).

50. It is equally well settled that freedom from confinement is a core liberty interest. S*ee, e.g., Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)); *Reno*, 507 U.S. at 301 (collecting cases); *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (bodily freedom is the "most elemental of liberty interests").

51. The Fifth Amendment's Due Process Clause prohibits government deprivation of an individual's life, liberty, or property without due process of law. *See Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017).

52. Petitioner has been in the United States for over 25 years. Respondents' agents released Petitioner within hours of their April 25, 2026, arrest and detention of him.

53. The Respondents decision to release Petitioner from detention created an implicit promise that his liberty would be revoked only if he failed to abide by the conditions of his release. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *see also Kaur v. U.S. Dep't of Homeland Sec.*, 813 F. Supp. 3d 1167, 1174-1175 (C.D. Cal. 2025).

54. Additionally, Respondents' departure from its position that they are detaining Petitioner under § 1226(a) and that their detention authority somehow transformed to 8 U.S.C. §

1225(b)(2) (within the past several weeks) violates Petitioner's right to procedural due process.

55. To determine what process is due, courts apply the three-part test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See Hernandez*, 872 F.3d at 993 (applying *Mathews* factors in immigration detention context); *Kaur*, 813 F. Supp. 3d at 1176.

56. The *Mathews* factors are: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

57. Petitioner has a substantial private interest in remaining free from detention. He has been living in the United States for over 25 years, works full-time, is an active member of his community, and is the father of two United States citizen children. *See Morrisey*, 408 U.S. at 482 (explaining that private interests include the freedom to "be gainfully employed and… to be with family and friends and to form the… enduring attachments of normal life").

58. Second, the risk of an erroneous deprivation of Petitioner's liberty is high where, as here, he has not received any bond or custody redetermination hearing. *Marco Polo F.M. v. Warden*, No. 1:26-cv-05116-TLN-AC, 2026 U.S. Dist. LEXIS 154465, at *8 (E.D. Cal. Jul. 10, 2026) (citing *A.E. v. Andrews*, No. 1:25-cv-00107-KES-SKO, 2025 U.S. Dist. LEXIS 94233, at *12 (E.D. Cal. May 16, 2025) (internal quotation omitted)).

59. Third, the government's interest in detaining Petitioner without a hearing is low. In immigration court, custody hearings are routine and impose a "minimal" cost. *See Doe v. Becerra*, 787 F. Supp. 3d 1083, 1094 (E.D. Cal. 2025).

60. Further, the Government's interest in implementing its novel reinterpretation of 8 U.S.C. § 1225(b)(2)(A) is minimal. "Until 2025, DHS applied § 1226(a) and its discretionary release framework to most noncitizens in the United States without valid documentation." *Lopez v. Chestnut*, No. 1:26-cv-02629-JLT-HBK, 2026 U.S. Dist. LEXIS 139142, at *7-8 (E.D. Cal. Jun 23, 2026) (citations omitted). "In July 2025, the DHS and DOJ adopted a new position that § 1225, instead of § 1226, The resumed application of decades of agency practice will satisfy the Government's interest in enforcement of the immigration laws.

61. In Petitioner's case, all three *Mathews* factors weigh heavily in favor of holding that the Respondents' refusal to provide him with any process whatsoever violates his right to procedural due process. The Court should grant the petition for a Writ of Habeas Corpus for this reason as well.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1236, and is arbitrary and capricious and an abuse of discretion under 5 U.S.C. § 706.

(4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately or, alternatively, order that a neutral and impartial adjudicator conduct a bond hearing pursuant to 8 U.S.C. § 1236(a);

(5) Award him his attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(6) Grant any further relief this Court deems just and proper.

Respectfully submitted,

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*Motion for admission pro hac vice forthcoming.

Attorneys for the Petitioner

Dated: July 20, 2026

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Mr. Montoya Lopez, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this twentieth day of July 2026.

/s/ Daniel I. Smulow
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